

Andrew G. Patel
Attorney-at-Law
15 Chester Avenue
White Plains, New York 10601
apatel@apatellaw.com

Telephone 212-349-0230

By ECF

January 2, 2025

The Honorable Lewis J. Liman
United States District Judge
United States Courthouse
500 Pearl Street
New York, NY 10007

Re: U.S. v. Sean Smith
23 Cr. 99 (LJL)

Dear Judge Liman:

Sean Smith was born on April 12, 1990. He is now 34 years old. He was born during the height of the crack epidemic. At the time Sean was born, his mother was a crack addict. Sean was sent to a foster family as soon as he was able to leave the hospital.¹ As Mr. Smith's aunt, Michelle Smith-O'Bryant, wrote to Your Honor, "Being born to a crack addicted mother and not knowing who his father is could be very challenging." See, Exhibit D. Time has shown that family dysfunction for a drug exposed infant does more damage than the in utero drug exposure.

Attached to this submission are letters from Mr. Smith and his family. These letters will tell Your Honor both of the traumas that Sean Smith experienced literally from the day he was born and of the reasons for hope for his future.

Letter from Sean Smith

The letter from Sean Smith is attached as Exhibit A. Mr. Smith's letter is short and to the point. He was in Philadelphia when he learned about the

¹ I have been informed by the New York City Administration for Children's Services that the records of Mr. Smith's early childhood placements have been "expunged" due his age.

The Honorable Lewis J. Liman
United States District Judge
January 2, 2025
Page 2

indictment. Rather than running, he returned to New York and surrendered to the United States Marshals on March 6, 2023.

On March 7, 2023, Mr. Smith was presented before the Honorable Gabriel W. Gorenstein, United States Magistrate Judge, and remanded. When Your Honor imposes sentence on Mr. Smith, he will have been housed in the MDC for more than 22 months of what have been described as “dangerous” and “barbaric conditions” *United States v. Colucci*, No. 23 Cr. 417, 2024 WL 3643857, at *1 (E.D.N.Y. Aug. 5, 2024).

In the MDC, Mr. Smith has experienced repeated lockdowns, ranging in length from a few days to a few weeks, often resulting from the lack of adequate staffing. During those lockdowns, the inmates were locked in their cells for 23 hours a day and let out only to shower and to try to make a phone call or write an email to their loved ones. It is not an exaggeration to say that the conditions in the MDC are so terrible that each day spent there is the equivalent of two or more days spent in a well-run facility. Indeed, it has become “routine for judges in both this District and the Eastern District [of New York] to give reduced sentences to defendants based on the conditions [in the MDC],” *United States v. Chavez*, 710 F.Supp.3d 227,229 (SDNY, 2024)

It is respectfully requested that in imposing sentence upon Sean Smith, the Court should consider the difficult conditions of confinement at the MDC and impose a sentence that recognizes that the time he has spent there has been more punitive than the time spent by inmates at other institutions.

Despite these conditions, Mr. Smith was able to complete a Commercial Driver License Course. The certificate of completion is attached as Exhibit B. Driving a truck for a living can be hard work with days away from family. Over the years, a number of my clients have called me to tell me that, when they were released from custody, they obtained their CDLs and proudly and legally supported their families. Mr. Smith has a job waiting for him as soon as he gets his CDL.

The Honorable Lewis J. Liman
United States District Judge
January 2, 2025
Page 3

Letters from Family and Friends

Attached as Exhibit C, is a letter from Crystal Wright-Smith, Sean Smith's mother. Ms. Wright-Smith describes her son as a caring individual. I wish Ms. Wright-Smith had told Your Honor of her struggle to obtain and maintain sobriety. It is a continuing and, in my view, heroic battle.

The information in the PSR about Mr. Smith's personal history is based on interviews with both Mr. Smith and his mother. Their recollections of events do not always match. For example, paragraph 77 states that Mr. Smith and his brother were placed in foster care after his father died. Mr. Smith was in fact placed in foster care or the care of other family members from the time of his birth. Mr. Smith never met his father.

One thing that Ms. Wright-Smith states in her letter is that Mr. Smith now has a family that loves him and is in a position where they are now able to assist him when he is released from custody.

Attached as Exhibit D is a letter from Shinea Smith, Mr. Smith's older sister. Shinea Smith is something of a force of nature. She describes the childhood that she and Sean survived. Shinea says that Sean was put on medication for ADHD (Attention-deficit/hyperactivity disorder) when he was 12 years old. Mr. Smith has not been treated or medicated for ADHD in more than 20 years. In that time he has accumulated a significant criminal history and spent years in prison. ADHD is not something that you outgrow. Fortunately, there are currently medications that help people manage their ADHD with a minimum of side effects.

Shinea is now both able and willing to help Sean when he comes home. Shinea has a job waiting for Sean as soon as he gets his CDL license.

The previously referenced letter from Michelle Smith-O'Bryant, Mr. Smith's "Auntie" is attached as Exhibit E. In a brief letter, Ms. Smith-O'Bryant writes to tell Your Honor of the challenges that Sean faced from the day he was born. She talks about Sean's desire for a family, which he is currently blessed to have. She sees Sean as a "wonderful person" and she is optimistic about Sean's future.

The Honorable Lewis J. Liman
United States District Judge
January 2, 2025
Page 4

A letter from Schanell Sanders, who has been a family friend for almost 20 years, is attached as Exhibit F. She asks for Sean to have the “chance to rectify his mistakes and chart a positive path forward.”

Age

Mr. Smith is now 34 years old. We respectfully submit that reaching the age of 34 is a significant factor in determining an appropriate sentence. The science of neuro-development has taught us that people’s brains continue to develop in the years beyond the age of legal maturity.

When I was a young lawyer, I had the unique experience of sharing Chambers with the late Judge Kenneth Shorter of the New York State Supreme Court, criminal term. Judge Shorter was often assigned to some of the most serious and sensational criminal cases. I asked what his starting point was in determining an appropriate sentence. He told me that his starting point was to impose a sentence that would ensure that the defendant remained incarcerated until he reached the age of 35. I asked, “Why 35?” Judge Shorter said that 35 was the age when people’s “brains kicked in.” Judge Shorter was right. Older defendants commit fewer crimes and are less likely to reoffend.

Mr. Smith and I have discussed his plans for the future. He told me that he wants to drive trucks for a living. I asked him if he thought he would go back to his old life on the streets. He told that he was “too old for that stuff.” He said that he voluntarily surrendered because he wanted to put the “street” behind him.

Conclusion

We respectfully request that Your Honor impose a sentence of 36 months. Such a sentence will be sufficient but not greater than necessary to achieve the goals of sentencing. Sean Smith accepted responsibility both on December 7, 2023, the day he entered a guilty plea before Your Honor, and on March 6, 2023, the day he voluntarily surrendered to the U.S. Marshals.

The Honorable Lewis J. Liman
United States District Judge
January 2, 2025
Page 5

When Mr. Smith is released from custody, he will return to a family that is much changed from the family that he was taken from at birth. Mr. Smith's mother continues to remain drug free. His sister is a successful business woman who has the means and desire to help him turn his life around.

We also respectfully request that Your Honor direct that mental health treatment be part of his supervised release so that Mr. Smith's ADHD can be addressed.

According to my calculations, Mr. Smith will be 35 years old when he is released from custody. As Mr. Smith said, he is too old for the street life. With the help of his family, a mental health counselor and a Probation Officer he will have the support he needs to be a productive member of society.

Respectfully submitted,

/s/Andrew Patel
Andrew Patel
Counsel for Sean Smith

Exhibit A

Good afternoon, your honor, and the courts. I stand here today ready to accept the consequences of my actions. That is why I turned myself in. So I could put all of this behind me and move on with my life. I ask for not a day more or a day less than you think I deserve. When this indictment first come out, I was in Philly and had a good chance to run but I didn't cause I have nothing to run from. I'm ready to get this over with ASAP so I can get back to my life. I also took up a CDL class for driving 18-wheelers. And when I get home, I will take a job driving trucks. I have my family's help with getting a job when I am home. I also would like the courts to know that I am not gang related no more. All that got me was trouble and I don't need it. Thank you your honor and courts for letting me speak.

Sean Smith

Good afternoon, your honor, and the courts. I stand here today ready to accept the consequences of my actions. That's why I turned myself in so I could put all of this behind me and move on with my life. I ask for not a day more or a day less than what I deserve. When this indictment first came out, I was in Philly and had a good chance to run but I didn't cause I have nothing to run from. I'm ready to get this over with ASAP so I can ~~move~~ get back to my life. I also took up a CDL class for driving 18-wheelers. And when I get home, I will take a job driving trucks. I have my family's ~~and~~ help with getting a job when I come home. I also would like the courts to know that I'm not going related anymore, ~~and~~ that's got me was trouble and I don't need it. Thank you your honor and courts for letting me speak.

Sam Smith

Exhibit B

U.S. Department of Justice
Federal Bureau of Prisons
Certificate of Completion

We present this Certificate to

Sean Smith

COMMERCIAL DRIVER LISCENSE COURSE

Adult Continuing Education Curriculum

A. DeVastey

A. DeVastey -Education Technician

November 28th , 2023

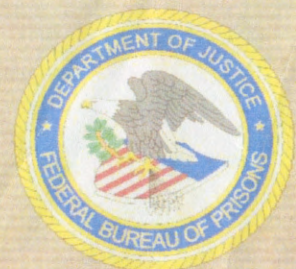
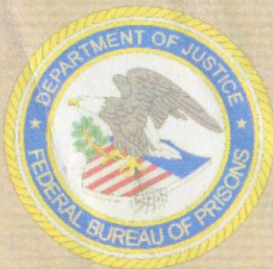


Exhibit C

To Whom It May Concern

My name is Crystal Wright - Smith, and I am Sean Smiths' mother. I am writing this letter to try and explain who Sean really is. For the last thirty years, Sean has always been someone who people held dear. Even as a child, he would always try and make sure that people did not feel sadness. He was always a caring individual, who put people's feelings ahead of himself. As he became older, he developed into a very reliable guy. No matter what changes he has been through in his life, he always maintained his true heart.

Sean is not a perfect person and must pay for what he has done. Still, he is not only defined by this crime. He is a kind, gentle, intelligent, reliable, and funny man. Sean is not the type of person who runs away from his responsibility. He also does not have a problem admitting his mistakes. I rely on Sean as well as his family. With that in mind, I am pleading to this court not to send Sean to far from us. Due to my disability, I will not be able to travel too far, and want to have regular visitations with him.

Sean has a family of many people who are supportive and who love him dearly. We want to stay as a direct connection to his sanity by visiting him and showing him that he has reasons to stay focused and rehabilitate.

Thank you in advance for taking the time to consider my request. Also, thank you for giving me the opportunity to explain to you the positive attributes of Sean.

Sincerely

Crystal Wright - Smith

Exhibit D

Shinea Smith
Englewood, NJ
March 31, 2024

I am writing to you today in support of my younger brother, Sean Smith, and tell you our story of survival.

Sean and I grew up in a challenging environment, raised by a mother who battled with substance abuse and without the presence of a father figure. He was born with neonatal abstinence syndrome due to his mom's addiction to crack cocaine and never knew his father so you can only imagine growing up and not being able to identify yourself with a man, unfortunately this is pretty normal in our environment. He was taken away immediately after birth and sent to his grandmother until she also started consuming and became addicted to crack cocaine. From there he went to my aunt and my foster mother who took over my two brothers. Although they tried their best there was still abuse going on, both emotionally and sexually. They were only there because honestly, no one else in the family could take them.

He had to grow up fast and learn to protect himself. After leaving that unstable environment, we went to live with my mother while she was recovering. He might have been 11 years old at the time. Although she was a recovering addict in search of love from the wrong men, she was once again exposed to negative male figures.

He was put on medication at the age of 12 for ADHD and was very aggressive due to the sexual abuse going on in my aunt's house, fighting was his way of not getting abused. When he was 15, we lost our grandmother, whom he cherished deeply, and her loss only deepened our pain. When he got with my mom she was with all these men who didn't bring anything positive, so Sean geared to the streets and found love and attention in the streets. He had to find some kind of protection in certain areas, which led him to join what appeared to be a "brotherhood" formed for survival. Unfortunately, he was seeking attention and found it in a gang. I still remember the moment he changed, but I myself was trying to survive so I was always running away from home in search of peace and protection.

Despite that, Sean has always been there for our family. He never hesitates to lend a helping hand whenever needed, and his presence brings comfort to those around him, especially to the young ones in our family. When I think of Sean, I see hope and unfulfilled dreams. He desires to have more in life and to help the younger generation. He looks forward to being there for his nephews, who know him as "Uncle Sean," the cool uncle who loves to play video games and teach them sports. Sean is not a person involved in any crime. He can make them feel valued and listened to, whether by playing games together or simply being there for them. Deep down he is still the sweet boy who loved to play in the Little Baseball League and with a need to protect others.

Sean's past is no secret but I know he is capable of change. He has shown genuine remorse for his actions and is committed to turning his life around. With the right support and guidance, I am confident that Sean can break free from the cycle of negativity that has held him back and I can now be there for him. I am no longer the sister who witnesses her younger brother getting lost in the streets. This is my time to support him.

Thank you for reading this letter and for considering Sean's case with compassion and understanding.

Sincerely,
Shinea Smith

Exhibit E

To Whom it may concern;

My name is Mrs. Michelle A Smith-O'Bryant and I am Sean's Aunt.

I am writing this letter open behalf of my nephew Sean Smith. Sean Xavier Smith was born April 12, 1990 to Crystal Smith and Father unknown. Sean had a lot of potential growing up however he was dealt a bad hand. Being born to a crack addicted mother and not knowing who his father is could be very challenging.

Sean was a great kid who enjoyed playing sports with me, his Auntie. I did teach him how to play basketball and baseball. He was really good at basketball. Academically he was strong in mathematics as well. He was a pretty good student and athlete up until he teenage years.

There was one thing missing; his parents and absent mother and an unknown father. He was missing the love that he yearned for from his parents. This young man was bounced around so much and as a result he trusted no one and gravitated to the streets. He wanted so much for family. It was obvious in the way he treated kids and women. As he got older I would call him my gentle giant.

Part of me feels guilty because I wanted to raise him from the start however I was young and in college myself.

Sean is a wonderful person. He cares about people in general. He would be a great teacher someone who could shape his community for the better if given the opportunity to do so. He would make a positive difference in peoples' lives given the resources as well.

I am not making excuses for Sean. What I am saying is that he deserves an opportunity to change. There is always room for change for bettering ones' self.

Warm Regards,

Mrs. Michelle Smith-O'Bryant

Exhibit F

To whom it may concern,

I hope this letter finds you well. I am writing to you today to express my support and advocacy for Sean Smith, a young man whom I have known since 2006. I first met Sean through his older sister, Shinea Smith, and have had the privilege of being a part of their family's circle for many years.

Sean is a remarkable individual, possessing a commendable level of humility and a strong work ethic. He has shown dedication and ambition, particularly in his pursuit of trying to obtaining his CDL's and his involvement in the trucking industry.

While I acknowledge that Sean may have encountered challenges and made choices that have led to the current circumstances, I firmly believe in his capacity for growth and redemption. We are all imperfect beings navigating a world fraught with complexities and temptations, and Sean is no exception. However, it is my sincere belief that he deserves another chance to rectify his mistakes and chart a positive path forward.

I understand the gravity of the situation and the importance of accountability. Nevertheless, I implore you to consider the totality of Sean's character and his potential. With the necessary support and guidance, I am confident that Sean can overcome his past missteps and contribute positively to society.

Thank you for taking the time to read my letter and for considering Sean's circumstances with compassion and fairness. If you require any further information or would like to discuss this matter further, please do not hesitate to contact me.

Sincerely,

Schanell M. Sanders